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File

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January 17, 1992

JAN 17 1992

Federal Communications Commission  
Office of the Secretary

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: FM Channel 237A  
South Congaree, South Carolina

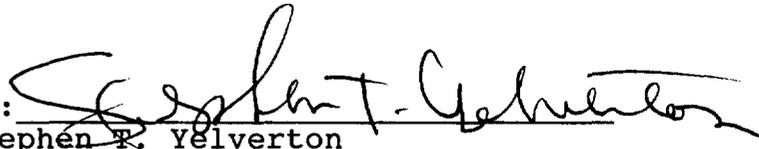
Dear Ms. Searcy:

Enclosed for filing on behalf of Alexander Snipe, Jr., d/b/a  
Glory Communications is an original and four (4) copies of its  
"Reply to Opposition" of Valentine Communications, Inc.

Please contact the undersigned in our Washington, D.C.  
office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:   
Stephen T. Yelverton  
Attorneys for Alexander Snipe, Jr.  
d/b/a Glory Communications

cc: Audio Services Division

Enclosures

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9841.002

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JAN 17 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In Re Application of: )  
VALENTINE COMMUNICATIONS, INC. ) File No. BPH-910228MD  
For Construction Permit )  
for a New FM Station, )  
Channel 237A, )  
South Congaree, South Carolina )  
To: Chief, Audio Services  
Division

REPLY TO OPPOSITION

Alexander Snipe, Jr., d/b/a Glory Communications ("Glory"), by its attorneys, pursuant to Sections 1.45(b) and 73.3584(b) of the Commission's Rules, hereby submits this "Reply to Opposition." On November 19, 1991, Glory filed a "Petition to Deny or Dismiss" the application of Valentine Communications, Inc. ("Valentine"). On January 7, 1992, Valentine filed an "Opposition to Petition to Deny." In reply to the opposition, Glory submits the following comments.

In its petition to deny or dismiss, Glory raised questions about Valentine's tower site certification in its application. On April 12, 1991, Valentine's application was dismissed because it did not include a tower site certification. In a "Petition for Reconsideration," filed May 6, 1991, Valentine did not contend that the tower site certification "substantially" complied with Commission requirements. Rather, Valentine indicated that the entire tower site certification and all of

page 24 of the application may not have been initially filed with the Commission. Valentine admitted that it could not explain why page 24 was missing from the application.

Valentine's statements in its petition for reconsideration are fundamentally inconsistent with the Commission's October 2, 1991, action reinstating its application. Valentine refers to a missing page. The Commission refers to a defective certification.

In its opposition to the petition, Valentine fails to explain this inconsistency. Why would have Valentine previously acknowledged that the page may have not been submitted to the Commission at the time of filing? Valentine's previous statements and the Commission's actions do not appear to relate to the same application. Until this inconsistency is explained and resolved, Valentine's application should not be processed.

Valentine berates Glory for claiming that the tower site certification page is not in Commission public files. However, Valentine submits a declaration of Kellie Bise which acknowledges that the tower site certification page is not in the Commission's public reference room files. Rather, it is located in the FM Branch which is not normally accessible to the public.

Valentine's opposition misses the point of Glory's petition to deny or dismiss. Its own prior statements raise a substantial and material question of fact as to whether the tower site certification page was submitted to the Commission at the time of initial filing. Why did Valentine allude to the page as missing if it had been timely submitted? If not initially

submitted, how did the page later become included in Commission files?

Valentine contends that Glory's petition to deny or dismiss is actually a petition for reconsideration of the reinstatement of its application. However, Valentine ignores the fact that subsequent to the reinstatement, the Commission issued a Public Notice, No. NA-152, which allowed petitions to deny to be filed. Glory raises a new and different issue that Valentine's explanation for the tower site certification deficiency made admissions against its interests which were not addressed in the October 2, 1991, reinstatement action. A fair reading of Valentine's petition for reconsideration indicates that page 24 of the application was not initially submitted to the Commission.

Valentine declines to address other issues raised by Glory. It contends that such issues should not be raised pre-designation. However, it is the actual practice of the Commission to include basic qualifying issues in hearing designation orders if information available at the time requires specification of the issues. See, e.g., Kansas Broadcast Limited Partnership, 4 FCC Rcd. 4640, 4641 (1989), sham ownership issues were specified against Sonrise applicants. See also, Tri-State Broadcasting, 6 FCC Rcd. 6058 (1991); Dean F. Aubol, 6 FCC Rcd. 4117 (1991), financial issues were specified based on information available at the time to the Commission.

Valentine does not refute Glory's allegations. Where facts are alleged and adequately supported, which if true require

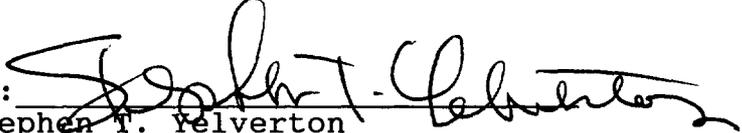
denial of an application, basic qualifying issues must be specified. Astroline Communications Company Limited Partnership v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

WHEREFORE, in view of the foregoing, Glory requests that the Commission deny or dismiss the application of Valentine.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:

  
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January 17, 1992  
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CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 17th day of January, 1992, I have caused to be hand delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Reply to Opposition" to the following:

Larry D. Eads, Chief \*  
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\*Hand delivery

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